STATE OF SOUTH CAROLINA
IN THE COURT OF GENERAL SESSIONS
NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY

STATE OF SOUTH CAROLINA	)	
	)	
vs.	)	94-GS-1221
	)	ORDER
	)	SUPPRESSING
	)	EVIDENCE
Robert Lee Bacote	)	
	)	

THIS MATTER CAME BEFORE THE COURT on October 18, 1995, upon the motion of the defendant, Robert Lee Bacote, requesting this Court suppress evidence of the Defendant's refusal to submit to a chemical breath test in connection with his arrest for Driving Under the Influence of Alcohol.

Having considered the arguments of counsel for the State and the defendant and the exhibits and testimony proffered, this Court rules as follows:

I. Having found no controlling appellate precedent to the contrary, the prior Circuit

Court order of the Honorable Walter J. Bristow, Jr., is binding upon this Court. Judge Bristow's order states that administrative decisions regarding the defendant's refusal to submit to a chemical breath test following an arrest for driving under the influence charges are binding upon the Circuit Court; AND

II. The Administrative Officer's decision to rescind the drivers license suspension based upon the failure of the arresting officer to appear a the hearing binds this Court and collaterally estops the State from relitigating or admitting into evidence the Defendant's refusal to submit to a chemical breath test; AND FURTHER

III. The decision of this Court to suppress evidence associated with the defendant's refusal of a chemical breath test may be directly appealed by the State under the authority of State v. McKnight, 287 S.C. 167, 337 S.E.2d 208 (1985) and S.C. Code Ann. § 14-3-330 (1976).

THEREFORE, IT IS ORDERED that any and all evidence associated with the defendant's refusal of a chemical breath test is hereby inadmissible in the prosecution's case in chief.

IT IS SO ORDERED.

B. Hicks Harwell, Jr.
Circuit Court Judge

November 2, 19958
Moncks Corner, SC

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State . . . . . Appellant,

v.

Robert Lee Bacote . . . . . .Respondent.

Appeal From Berkeley County
B. Hicks Harwell, Jr., Circuit Court Judge
Unpublished Opinion No. 97-UP-105
Submitted December 6, 1996 - Filed February 6, 1997

REVERSED

Assistant Solicitor Brent Alan Gray, of Moncks Corner, for appellant.

Stephen P. Groves and Stephen L. Brown, both of Young, Clement, Rivers & Tisdale, of Charleston; Reese I. Joye, Jr., and John L.

Drennan, both of Joye Law Firm, of North Charleston, for respondent.

PER CURIAM: Robert L. Bacote was arrested and charged with driving under the influence. The State appeals the order of the trial judge suppressing the evidence Bacote refused to submit to the breathalyzer test. We reverse.[1]

Facts

Bacote was arrested for driving under the influence of alcohol on June 26, 1994. Upon being taken into custody by police, Bacote refused to take a breathalyzer test. Because of his refusal to take the breath test, Bacote's driver's license was automatically suspended for ninety days pursuant to South Carolina's implied consent statute. S.C. Code Ann. § 56-5-2950(d) (Supp. 1996). Bacote requested an administrative hearing before the South Carolina Department of Public Safety, pursuant to S.C. Code Ann. § 56-5-2950(e) (1991), on the issue of whether he properly refused to submit to the

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[1]We decide this case without oral argument pursuant to Rule 215, SCACR.

breathalyzer test. The arresting officer failed to appear at the administrative hearing, and therefore, the hearing officer rescinded the suspension of Bacote's driver's license.

At trial, the State sought to admit testimony that Bacote refused to take the breathalyzer. Bacote objected on the grounds of collateral estoppel, arguing the State was bound by the previous decision of the administrative hearing officer. The trial judge agreed and issued an order stating:

> I. Having found no controlling appellate precedent to the contrary, the prior court order of the Honorable Walter J. Bristow, Jr. is binding upon this Court. Judge Bristow's order states that administrative decisions regarding a Defendant's refusal to submit to a chemical breath test following an arrest for driving under the influence charges are binding upon the Circuit Court; AND
>
> II. The Administrative Officer's decision to rescind the drivers license suspension based upon the failure of the arresting officer to appear at the hearing binds this court and collaterally estops the State from relitigating or admitting into evidence the Defendant's refusal to submit to a chemical breath test .

Discussion

The State argues the trial judge erred in holding that the decision of the administrative hearing officer binds the circuit court and collaterally estops the State from relitigating or admitting into evidence the Defendant's refusal to submit to a chemical breath test. We agree.

Under this state's implied consent statute, S.C. Code Ann. § 56-5-2950(d) (Supp. 1 996), a person arrested for driving under the influence who refuses to take a breathalyzer test will automatically have his or her license suspended for ninety days. Under subsection (e) of the statute, the Department of Public Safety, at the request of the defendant, must grant a hearing limited to the issues of whether the defendant was placed under arrest, whether the person had been informed that he did not have to take the test but that his privilege to drive would be suspended or denied if he refused to submit to the test, and whether he refused to submit to the test upon request of the officer. S.C. Code Ann. § 56-5-2950(e) (1991). If a hearing is requested, the ninety-day suspension does not begin until the date of the order sustaining the suspension. S.C. Code Ann. § 56-5-2950(d) (Supp. 1996).

In Shelton v. Oscar Mayer Foods Corp., 319 S.C. 81, 459 S.E.2d 851 (Ct.App. 1995), this Court addressed the issue of whether an administrative decision of the Employment

Security Commission finding an employee was discharged for cause was binding in the employee's subsequent wrongful termination suit. In holding that collateral estoppel did not apply to ESC findings, the court first looked to the purpose underlying South Carolina's Employment Security Law. Id. at 85, 459 S.E.2d at 854. The court found that the legislature intended to keep procedural hurdles to a minimum in hearings before the ESC to enable unemployed claimants to obtain prompt decisions regarding ESC benefits. Id. at 86, 459 S.E.2d at 854. Because of this policy, the narrow issue the ESC decides is simply whether the claimant's discharge was with or without cause in order to determine whether the claimant should receive unemployment benefits. Id. at 86, 459 S.E.2d at 854-855. The court stated:

> Employers are not likely to fully litigate all issues before the ESC because the matter in controversy is comparatively small. Further, claimants are generally likely to be unrepresented by counsel at these hearings. If collateral estoppel applied to ESC decisions, ESC hearings would essentially become forums for employers and employees to engage in lengthy civil litigation over claims relating to an employee's discharge. This, we feel, would frustrate the intent underlying the employment security law.

Id. at 86, 459 S.E.2d at 855.

Applying the reasoning in Shelton we find that collateral estoppel should not apply to administrative hearings pursuant to S.C. Code Ann. § 56-5-2950(e) (1991). The purpose of providing an administrative hearing before the Department of Public Safety is to afford the driver some measure of procedural due process before suspending his or her driver's license. A hearing is necessary in this instance because the driver's license suspension occurs whether or not the person is ultimately found guilty of driving under the influence, and the suspension occurs before the person can obtain a trial on the merits of the charge. The hearing is limited to the narrow issues of whether the person was placed under arrest, whether the person had been informed he did not have to take the breath test, but that if he didn't his license would be suspended, and whether he in fact refused to submit to the test. Moreover, suspensions and revocations of driver's licenses by the Department are civil in nature and constitute no part of the punishment fixed by the court. Parker v. South Carolina State Highway Department, 224 S.C. 263, 271, 78 S.E.2d 382, 385 (1953).

We hold the purpose of the administrative hearing is limited to the appropriateness of the ninety-day suspension,

and is not intended to be a pre-trial evidentiary hearing.[2] Thus, the trial judge erred in holding the State was collaterally estopped from "relitigating" the issue of whether Bacote refused to take the breathalyzer test.

The State also argues the trial judge erred in holding that the prior order of Circuit Court Judge Walter Bristow was binding authority. However, because we reverse on the above ground, we need not address that issue.

Accordingly, the decision of the trial judge is

REVERSED.

CONNOR, HEARN, and STILWELL, JJ., concur.

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[2]See also McDaniel v. South Carolina Dep't of Pub. Saf., Op. No. 2607 (Davis Adv. Sh. No. 34 at 27) (S.C. Ct. App. Filed Dec. 23, 1996) (holding Dep't of Public Safety was not estopped from permanently revoking McDaniel's license for a fifth driving under the influence charge, even though he pled guilty only to fourth offense DUI. The court stated, "No representations made by the solicitor or the judge who accepted McDaniel's plea can serve as the basis for estopping the Department from revoking McDaniel's license because the solicitor and judge were involved only with the criminal case against McDaniel." Id. at 32.

THE SOUTH CAROLINA COURT OF APPEALS

The State . . . . . Appellant,

v.

Robert L. Bacote . . . . . Respondent.

ORDER DENYING PETITION
FOR REHEARING [*EN BANC*]

PER CURIAM: After careful consideration of the Petition for Rehearing [With Suggestion for Rehearing *En Banc*, the Court is unable to discover any material fact or principle of law that has been either overlooked or disregarded and, hence, there is no basis for granting a rehearing. It is, is therefore, ordered that the Petition for Rehearing *En Banc* be denied.

[SIGNATURE LINES AND SIGNATURES OMITTED]
March 19, 1997
Columbia, South Carolina

THE SOUTH CAROLINA COURT OF APPEALS

The State . . . . . Appellant,

v.

Robert L. Bacote . . . . . Respondent.

ORDER DENYING PETITION
FOR REHEARING

PER CURIAM: After careful consideration of the Petition for Rehearing, the Court is unable to discover any material fact or principle of law that has been either overlooked or disregarded and, hence, there is no basis for granting a rehearing. It is, therefore, ordered that the Petition for Rehearing be denied

[SIGNATURE LINES AND SIGNATURES OMITTED]

Columbia, South Carolina

March 19, 1997.

THE SUPREME COURT OF SOUTH CAROLINA

State of South Carolina, ... Respondent,

v.

Robert Lee Bacote, ... Petitioner.

ORDER

We grant the petition for a writ of certiorari to review the Court of Appeals' decision in State v. Bacote, Op. No. 97-UP-105 (S.C.Ct.App. filed February 6, 1997). The parties shall proceed to serve and file the appendix and briefs as provided by Rule 226(h), SCACR.

[SIGNATURE LINE AND SIGNATURE OMITTED]
Columbia, South Carolina
December 5, 1997

THE STATE OF SOUTH CAROLINA
In The Supreme Court

The State, ... Respondent,

v.

Robert Lee Bacote, ... Petitioner.

ON WRIT OF CERTIORARI
TO THE COURT OF APPEALS

Appeal From Berkeley County
Hicks B. Harwell, Jr., Judge

Opinion No. 24794
Heard April 21, 1998 - Filed June 1, 1998

AFFIRMED

Stephen P. Groves, Sr., and Stephen L. Brown, both of Young, Clement, Rivers & Tisdale, L.L.P., of Charleston; and Reese I. Joye and John L. Drennan, both of Joye Law Firm, L.L.P., of North Charleston, for petitioner.

Assistant Solicitor Brent A. Gray, of Moncks Corner, for respondent.

MOORE, A.J.: Petitioner sought a writ of certiorari to review the Court of Appeals' decision in State v. Bacote, Op. No. 97-UP-105 (S.C. Ct. App. Filed February 6, 1997). We affirm.

FACTS

After petitioner was arrested for driving under the influence (DUI) on June 26, 1994, he refused to take the breathalyzer test. He requested an administrative hearing from the South Carolina Department of Public Safety (SCDPS) to determine whether his license should be automatically suspended under the implied consent statute, S.C. Code Ann. § 56-5-2950 (Supp. 1996). Because the arresting officer did not appear at the administrative hearing, the hearing officer rescinded petitioner's automatic suspension.

Prior to petitioner's DUI trial, petitioner moved to suppress evidence regarding his refusal to take the breathalyzer test. The trial judge ruled collateral estoppel applied and held evidence petitioner refused the breathalyzer should be suppressed based upon the administrative hearing and subsequent dismissal of the automatic suspension. The State immediately appealed. The Court of Appeals reversed.

ISSUE

Did the Court of Appeals err in holding the trial judge erroneously suppressed petitioner's refusal to take the breathalyzer?

DISCUSSION

Under § 56-5-2950, a defendant may request a hearing to determine whether the defendant was placed under arrest, was informed that he could refuse the test whereupon his driving privileges would be suspended, and actually refused to take the test. If a hearing is requested the ninety-day suspension does not begin until after the hearing and the suspension is sustained.

The Court of Appeals relied upon its decision in Shelton v. Oscar Mayer Foods Corp. 319 S.C. 81, 459 S.E.2d 851 (Ct. App. 1995), and held collateral estoppel did not

apply to administrative hearings held pursuant § 56-5-2950. In Shelton, the issue was whether an administrative finding of the Employment Security Commission (ESC) was binding in the employee's subsequent wrongful termination suit. Based upon the limited nature of the ESC's hearing, the Court of Appeals held the ESC's findings were not binding. We reviewed the Court of Appeals' decision in Shelton and affirmed. Shelton v. Oscar Mayer Foods Corp., 325 S.C. 248, 481 S.E.2d 706 (1997). We agreed the nature of the ESC's hearing was limited and the ESC's findings should not be used as collateral estoppel in a subsequent civil action. In Shelton, we held if an issue decided at the ESC hearing could be used against an employer in a subsequent action, the hearing would become a full-blown trial on the issue of termination defeating the purpose which is to quickly provide an unemployed person some income.

We have previously adopted the general rule of collateral estoppel as set forth in the Restatement (Second) of Judgments § 27 (1982) in South Carolina Prop. & Cas. Ins. Guar. Ass'n v. Wal-Mart Stores. Inc., 304 S.C. 210, 403 S.E.2d 625 (1991). Section 27 states: "When an issue of fact or law is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or different claim." See also Palm v. General Painting Co. Inc., 302 S.C. 372, 396 S.E.2d 361 (1990) (citations omitted) ("Under the doctrine of

collateral estoppel, the second action is based upon a different claim and the judgment in the first action precludes relitigation of only those issues 'actually and necessarily litigated in the first suit.'").

In the context of a default judgment, collateral estoppel or issue preclusion does not apply because an essential element of that doctrine requires that the claim sought to be precluded actually have been litigated in the earlier litigation. 50 C.J.S. Judgments § 797 (1997). Thus, here, the license revocation hearing would not preclude the introduction of evidence regarding petitioner's refusal to take the breathalyzer because the issue was never actually litigated in the administrative proceeding. See State v. Lewry, 550 A.2d 64 (Me. 1988) (order entered by default in license suspension proceeding has no collateral effect in prosecution for DUI since the order was not the result of actual litigation on the issue on the merits); State v. Purvis, 739 S.W.2d 589 (Mo.App. 1987) (to be barred by collateral estoppel an issue must have been actually litigated as distinguished from a judgment rendered upon some preliminary or technical point, or by default and without trial).

Even had the issue actually been litigated, we hold collateral estoppel does not apply to issues decided at administrative hearings held pursuant to § 56-5-2950. The doctrine of collateral estoppel is indented to reduce litigation and conserve the resources of the court and litigants and it is

based upon the notion that it is unfair to permit a party to relitigate an issue that has already been decided. Since it is grounded upon concepts of fairness, it should not be rigidly or mechanically applied. In re Juan C., 89 N.Y.2d 659, 679 N.E.2d 1061, 657 N.Y.S.2d 581 (1997). See also 50 C.J.S. Judgments § 779 (1997). Thus, even if all the requirements of issue preclusion are met, when unfairness or injustice results or public policy requires it, the doctrine's application may be precluded. Id.

Section 28 of the Restatement (Second) of Judgments (1982), which we also adopted in South Carolina Prop. & Cas. Ins. Guar. Ass'n. v. Wal-Mart Stores, supra, provides, in pertinent part:

> Although an issue is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, relitigation of the issue in a subsequent action between the parties is not precluded in the following circumstances:
>
> (3) A new determination of the issue is warranted by differences in the quality or extensiveness of the procedures followed in the two courts or by factors relating to the allocation of jurisdiction between them . . .

> (5) There is a clear and convincing need for a new determination of the issue (a) because of the potential adverse impact of the determination on the public interest or the interests of persons not themselves parties in the initial action, (b) because it was not sufficiently foreseeable at the time of the initial action that the issue would arise in the context of a subsequent action, or (c) because the party sought to be precluded, as a result of the conduct of the adversary or other special circumstances, did not have an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action.

In State v. Williams, 76 Ohio St.3d 290, 667 N.E.2d 932 (1996), the Ohio Supreme Court held that pursuant to § 28(3) and (5) of the Restatement, an administrative license revocation proceeding does not preclude litigation of the same issue in a criminal prosecution. The court pointed out the limited nature of the administrative proceeding and its informality and also relied upon the adverse impact that collateral estoppel would have in the criminal proceedings if it were allowed (i.e. the State would be forced to treat the administrative hearing as an initial and essential part of the criminal trial).

Other jurisdictions have similarly held the state does

not have a full and fair opportunity to litigate issues during a license revocation proceeding, and it would be unfair to preclude the state from litigating such issues during a subsequent criminal trial. See People v. Moore, 138 Ill.2d 162, 561 N.E.2d 648 (1990); People v. Lalka, 113 Misc.2d 474, 449 N.Y.S.2d 579 (1982). We agree with the reasoning applied in these cases. The summary nature of the typical license revocation hearing makes determinations from such a hearing inappropriate for the application of collateral estoppel. Moore, supra.

Moreover, if every license revocation hearing carries with it potential collateral estoppel impact on a subsequent criminal action, the State may feel compelled to intervene in every administrative action to effectively protect its interests in some future criminal proceeding. The net effect would be to slow down what should be a summary administrative proceeding designed to handle license revocation matters quickly. Accordingly, the Court of Appeals' decision is

AFFIRMED.

FINNEY, C.J.., TOAL, WALLER and BURNETT,JJ., concur.

The Supreme Court of South Carolina

September 10, 1998

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Re: The State v. Robert Lee Bacote
Case No. 94-GS-08-1221

Dear Counsel:

The Court has refused your Petition for Rehearing in the above case in the following Order:

"Petition for Rehearing is denied.

[Signature Lines Omitted]

September 10, 1998."

The remittitur in this matter is today being forwarded to the Clerk of Court for Berkeley County.

Very truly yours,

Acting Deputy Clerk
Brenda F. Shealey